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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,755	01/12/2004	Hans Erik Schmidt	2424-30	9597
29540	7590	11/22/2005	EXAMINER	
PITNEY HARDIN LLP			TRETTEL, MICHAEL	
7 TIMES SQUARE			ART UNIT	
NEW YORK, NY 10036-7311			PAPER NUMBER	
			3673	
DATE MAILED: 11/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/755,755	Applicant(s) SCHMIDT, HANS ERIK	
	Examiner Michael Trettel	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/31/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley (US 5,722,482). Buckley shows a thermal control device formed by attaching a layer 21 with integrated PCM material 20 with at least one additional layer of insulating material. The device can be formed as a blanket for use in thermal control of a febrile patient. As described in column 4 and shown in Figure 2, the device can be formed as a laminated structure with a layer B being formed from a PCM type material. An insulating layer A can be attached to one side of the layer B to form an exterior surface of the composite. A similar insulating layer C can be attached to the opposed side of layer B, and forms an interior side of the composite which can be placed against the skin of a user. Both layers A and C are specified as being formed from thermally insulating materials such as a plastic foam (column 4, line 59) with layer C being thinner than layer A. The examiner takes notice that while plastic foam is specified as being the preferred material, a large class of materials are available which qualify as insulating materials. Such materials include but are not limited to down, feathers, textiles such as cotton or polyester materials, wool, latex foams, and so forth. Because the equivalence of these insulating materials is well known within the art it would have been obvious to the skilled artisan to have used any

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one of these equivalent materials such as down as one of the insulating layers A, C in the Buckley thermal control device.

Response to Arguments

Applicant's arguments filed October 31, 2005 have been fully considered but they are not persuasive. The applicant has argued that the intended use of Buckley differs from that claimed, and that Buckley does not show the use of a PCM material in combination with a down filling layer. With respect to the first argument, it is well established that the intended use set forth in a claim does not define over a device known in the art if that device is inherently capable of meeting that use. In the present case Buckley discloses a device meant to be used in clothing, which is perfectly capable of use as a for "minimizing temperature variations during sleep". People sleep while wearing clothing every day, with the clothing serving to minimize temperature variations. With respect to the second argument, the issue of using a PCM material in combination with a down filling material was already addressed in the rejection itself. The applicant has not addressed the argument presented in the rejection, but has instead simply asserted that Buckley alone does not suggest the use of a PCM material in combination with a down filling material. The essentially ignores the grounds of rejection which are based upon knowledge common in the art plus the disclosure of the Buckley reference. Since no comments or argument were presented against the reasons set forth in the rejection, the rejection has been repeated and will be made final.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

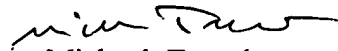
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (571) 272-7052. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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Michael Trettel
Primary Examiner
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